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09/730,676	12/06/2000	J. David Schaffer	US000322	8800

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EXAMINER

MANNING, JOHN

ART UNIT PAPER NUMBER

2614

DATE MAILED: 06/18/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/730,676

Applicant(s)

SCHAFFER ET AL.

Examiner

John Manning

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>4 and 5</u> . | 6) <input type="checkbox"/> Other: ____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 12-16 rejected under 35 U.S.C. 102(e) as being anticipated by Darbee et al. (US Pat No 6,130,726).

In regard to claim 12, the claimed limitation of “a display adapted to provide user interface elements to the user” is met by Figure 1, Item 14. The claimed limitation of “a communication outlet adapted to communicate with the consumer electronics device” is met by the RF transceiver circuit 48 of the remote control unit 10 as shown in Figure 2. The claimed limitation of “a processor” is met by microcontroller 28. The claimed limitation of determining “information regarding data content available to be experienced using the consumer electronics device” is met by the displayed program guide. (Col 9, Lines 39-43). The claimed limitation of causing “the display to communicate the information to the user” is met by Figures 1 and 2. The “display ‘window’ views a virtual program information grid with time as the lateral axis and channel,

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program or content source as the vertical axis. Each screen preferably displays information for one half-hour of the 24-hour period” (Col 9, Lines 39-43).

In regard to claim 13, the Darbee reference discloses present the user with a recommendation of content to be experienced. “it is possible for the software application running on the remote control unit 10 to obtain and cause to be stored in memory data indicative of the viewing habits of one or more users, or groups of users, of the remote control unit 10. The data stored may include for example, a date stamp, time stamp and/or channel identification data” (Col 10, Lines 15-20). Further, “once data indicative of the particular viewing habits, content selection characteristics or interests of a particular remote control user or group of users is transmitted to the content provider or host system, the content provider or host system may tailor additional programming, advertising or other content to be provided to the remote control unit 10” (Col 10, Lines 32-38).

In regard to claim 14, Darbee discloses that the consumer electronics device is a television.

In regard to claim 15, Darbee discloses that the consumer electronics device is an Internet browsing device. “In embodiments where the remote control unit 10 is used in conjunction with a personal computer or web computer, the data stored may also include an internet address or URL designation stamp” (Col 10, Lines 20-23).

In regard to claim 16, Darbee discloses that the information provided comprises an electronic program guide. The “display ‘window’ views a virtual program information grid with time as the lateral axis and channel, program or

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content source as the vertical axis. Each screen preferably displays information for one half-hour of the 24-hour period" (Col 9, Lines 39-43).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Darbee et al. in view of Wehmeyer et al (US Pat No 5,867,226).

In regard to claim 1, the Darbee reference discloses a program guide on a remote control display. The claimed limitation of "at least one user interface mechanism adapted to interact with the user" is met by met by Figure 1. The keyboard 15 and visual display 14 act as a user interface mechanism. The claimed limitation of "a processing device" is met by microcontroller 28. The claimed limitation of "presenting the at least one real-time event to the user at the user interface mechanism" is met by the displayed program guide. (Col 9, Lines 39-43). The Darbee reference is silent with respect to the recommendation being determined by a weighting function, such as "fuzzy-now". Wehmeyer teaches the use of a weighting function or routine, as shown in Figures 2 and 3, "so that the apparatus can be guided to make a prediction of which upcoming shows may be of interest to the viewer" (Col 2, Lines 38-40). Consequently, it would have been clearly obvious to one of ordinary skill in the art to modify Darbee with the

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use of a weighting function or routine "so that the apparatus can be guided to make a prediction of which upcoming shows may be of interest to the viewer".

Claim 2 is met by that discussed above for claim 1.

In regard to claim 3, Darbee discloses "the recommendation is a function of a user profile". "FIG. 2 shows a "predictive agent list" or "viewed item list" which may be generated as a screen display 210. Data is automatically stored in this predictive agent list by the apparatus of the invention, whenever a program is watch for a given period of time, for example, 5 or more minutes. In this way, a record is kept of the user's viewing habits so that the apparatus can be guided to make a prediction of which upcoming shows may be of interest to the viewer" (Col 2, Lines 33-40).

In regard to claim 4, Darbee discloses "the recommendation is a function of a user-selected category" as shown in Figure 6a. "FIGS. 6a-6c show screen displays which enable the user to exercise the features of the invention.

Specifically, FIG. 6a is a Predictive Agent Main Menu screen accessed for example via the normal hierarchical menu system of the DSS.RTM. satellite television system. The screen display of FIG. 6a has two "softkeys" labelled "Request a Suggestion" and "Edit User Information", respectively. Selecting "Request a Suggestion" causes a prediction operation to be performed, and brings up the screen display of FIG. 6b" (Col 5, Lines 7-14).

In regard to claim 5, the Wehmeyer reference inherently discloses that the weighting function is a function of the current time and the start time of the show. The combination of Darbee and Wehmeyer are silent with respect to the

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weighting function being a function of the duration of the show. However, it is submitted that it would have been clearly obvious to one of ordinary skill in the art to implement the combination of Darbee and Wehmeyer with a weighting function that is a function of the duration of the show so as to provide the user with a show of the preferred duration.

In regard to claim 6, as can be seen if Figure 2 of the Wehmeyer reference, there clearly is "a minimum recommendation value for a show" and "a maximum recommendation value of the show" based on the count number. The Wehmeyer reference inherently discloses that a criterion is a current time and the start time of the show. The combination of Darbee and Wehmeyer are silent with respect to the criterion being a function of duration of the show. However, it is submitted that it would have been clearly obvious to one of ordinary skill in the art to implement the combination of Darbee and Wehmeyer with a criterion that is a function of the duration of the show so as to provide the user with a show of the preferred duration.

In regard to claim 7, Darbee discloses that the apparatus is a remote and the processing device is internal to the remote as shown in Figures 1 and 2 (Col 7, Lines 5-26).

In regard to claims 8 and 9, the disclosed device is for use in a broadcast environment; therefore, the real-time event is broadcasted content and is located at a location external to that of the user.

In regard to claim 10, Wehmeyer discloses a "surf ring" in which only recommended events are assigned to the "surf ring". See Figure 6a-c. as shown

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in Figure 6a. "FIGS. 6a-6c show screen displays which enable the user to exercise the features of the invention. Specifically, FIG. 6a is a Predictive Agent Main Menu screen accessed for example via the normal hierarchical menu system of the DSS.RTM. satellite television system. The screen display of FIG. 6a has two "softkeys" labelled "Request a Suggestion" and "Edit User Information", respectively. Selecting "Request a Suggestion" causes a prediction operation to be performed, and brings up the screen display of FIG. 6b" (Col 5, Lines 7-14).

In regard to claim 11, Darbee discloses that the presenting occurs via a graphical user interface including an EPG. The "display 'window' views a virtual program information grid with time as the lateral axis and channel, program or content source as the vertical axis. Each screen preferably displays information for one half-hour of the 24-hour period" (Col 9, Lines 39-43).

5. Claim 17-22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Darbee.

In regard to claim 17, Darbee fails to explicitly disclose providing the recommendations in the form of a list. However, the examiner takes OFFICIAL NOTICE that it is notoriously well known in the art to put recommendations in the form of a list to facilitate the choosing of a recommendation. Consequently, it would have been clearly obvious to one of ordinary skill in the art to implement Darbee with recommendations in the form of a list to facilitate the choosing of a recommendation.



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In regard to claim 18, the claimed limitation of an interface mechanism that provides content to the user and receives input from the use is met by Figure 1. The keyboard 15 and visual display 14 act as a user interface mechanism. The claimed limitations of "a communication facility adapted to receive the content from an external provider" and "a tuning facility for selecting the content to be received via the communication facility" are met by the RF transceiver circuit 48 of the remote control unit 10 as shown in Figure 2. The claimed limitation of a processor "calculating at least one recommended piece of content from amongst a plurality of available pieces of content" is met by Figure 2. , Once "data indicative of the particular viewing habits, content selection characteristics or interests of a particular remote control user or group of users is transmitted to the content provider or host system, the content provider or host system may tailor additional programming, advertising or other content to be provided to the remote control unit 10" (Col 10, Lines 32-38). The Darbee reference fails to explicitly disclose, "automatically tuning the tuning facility to receive the recommended piece of content". However, the examiner takes OFFICIAL NOTICE that it is notoriously well known in the art to "automatically tuning the tuning facility to receive the recommended piece of content" so as to increase the ease of use. Consequently, it would have been clearly obvious to one of ordinary skill in the art to implement Darbee with "automatically tuning the tuning facility to receive the recommended piece of content" so as to increase the ease of use.

In regard to claim 19, Darbee discloses that the remote is coupled to a television. The reference discloses that "the communication facility comprises at

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least one of an antenna or a cable connection". "In accordance with a presently preferred form of the present invention, a tap antenna unit may be coupled to the set-top box or television tuner, or to a cable feeding the set-top box or television tuner" (Col 9, Lines 1-4). In addition to the display 14, of Figure 2, the television screen is inherently an interface mechanism.

In regard to claim 20 and 21, the reference discloses when "the user input is a channel up button actuation, but the automatic tuning does not go to the next channel up in sequence from a current channel" and "the user input is a channel down button actuation, but the automatic tuning does not go to the next channel down in sequence from a current channel". When "the CHANNEL Up or CHANNEL Down keys are pressed, the remote will not output a channel up or down command, but rather will substitute a "direct tune" command to the next higher or next lower numeric channel" (Col 10, Lines 3-7).

In regard to claim 22, The Darbee reference fails to explicitly disclose, when "the user input is a power on actuation and the automatic tuning does goes neither to a last channel previously viewed nor to a default channel"; however, it is submitted that it would have been clearly obvious to one of ordinary skill in the art to implement Darbee with automatically switch a recommendation screen upon power up (i.e. neither to a last channel previously viewed nor to a default channel) to so as to increase the ease of use.

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure is as follows.

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- The Hendricks et al. (US Pat No 5,798,785) reference discloses a terminal for suggesting programs offered on a television program delivery system.
- The McClard (US Pat No 6,438,752) reference discloses a method and system for selecting television programs based on the past selection history of an identified user.
- The Huang et al. (US Pat No 6,437,836) reference discloses an extended functionally remote control system.
- The Amano et al. (US Pat No 5,585,865) reference discloses a television broadcast receiver which selects programs by genre and past viewing habits.
- The Nelson (US Pat No 5,710,605) reference discloses a Remote control unit for controlling a television and recorder with a display for allowing a user to select between various programming schedules.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Manning whose telephone number is 703-305-0345. The examiner can normally be reached on M-F: 7:30 - 5:00 (off every other Wednesday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W Miller can be reached on 703-305-4795. The fax phone numbers for the organization where this application or proceeding is


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assigned are 703-746-9695 for regular communications and 703-746-9695 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to customer service whose telephone number is (703) 308-HELP.

JM

June 14, 2004



JOHN MILLER  
SUPERVISORY PATENT EXAMINER  
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